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Before the
FEDERAL COMMUNICATIONS COMMISSION
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JUL 18 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Advanced Television Systems
And Their Impact Upon the
Existing Television Broadcast
Service

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MM Docket No.87-268

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

The University of North Carolina Center for Public Television (UNCTV) on behalf of the University of North Carolina (UNC) hereby files its opposition to the Petition for Reconsideration (Petition) filed on June 13, 1997 by Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network (TBN), which seeks substantial changes to the Commission's Table of DTV Allotments adopted by the Commission in the Sixth Report and Order in the above-referenced proceeding. In support thereof, the following is shown:

1. UNCTV is the adjunct state agency of UNC established to provide noncommercial educational television programming to the citizens of North Carolina. Under the ultimate control and direction of UNC, which is the licensee of eleven full-service noncommercial educational television transmitters and more than twenty translators, UNCTV operates North Carolina's statewide noncommercial educational network, delivering extensive educational television programs and services to the state.

2. TBN proposes 47 changes in the Commission's Table of DTV Allotments for the sole purpose of protecting its secondary translator operations. Among the changes

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proposed by TBN is substitution of DTV Channel 63 for DTV Channel 59 which is currently assigned by the Commission to UNC's flagship public television Station WUNC-TV, VHF Channel 4, Chapel Hill, North Carolina. This proposal is entirely unacceptable and must be summarily rejected.

3. As an initial matter, TBN concedes that translator service is secondary in nature. The Commission's rules and policies protect full-service stations, not LPTV and translator stations. Section 74.702(b) provides that:

Changes in the TV Table of Allotments or Digital Television Table of Allotments (§§73.606(b) and 73.622(a), respectively, of Part 73 of this chapter), authorizations to construct new TV broadcast analog or DTV stations or to change facilities of existing such stations, may be made without regard to existing or proposed low power TV or TV translator stations. Where such a change results in a low power TV or TV translator station causing actual interference to reception of the TV broadcast analog or DTV station, the licensee or permittee of the low power TV or TV translator station shall eliminate the interference or file an application for a change in channel assignment pursuant to §73.3572 of this chapter.

UNCTV's station is a primary station. TBN's station is a secondary station. TBN was on notice when it filed its applications for translators that it was building its business as a secondary service. Yet TBN seeks to solve its problems by destroying the future of UNCTV's station.

4. Throughout the ATV/DTV proceedings the Commission has noted that insufficient spectrum exists to accommodate digital channels for full-service stations and preserve all low power and translator television service. Low power and translator operators have been on a notice from early on in these proceedings that displacement of their facilities might be necessary. In March 1991, the Commission imposed a partial freeze on new low power/translator station applications in major urban markets. The

public notice announcing the freeze stated that low power operations would "continue to have secondary status with regard to the introduction of ATV service" and specifically noted "[i]t is possible that some of these secondary stations may be displaced in channel if and when the spectrum is needed by full-service television stations for ATV use." Notice of Limited Low Power Television/Television Translator Filing Window: April 19, 1991 through May 3, 1991, fn 1, released March 12, 1991.

5. Later in the DTV proceedings the Commission confirmed the status of LPTV and translator facilities in the transition by deciding to continue "LPTV and translators' secondary status vis-a-vis ATV stations." Second Report and Order/Further Notice of Proposed Rule Making, 7 FCC Rcd 3340, 3351 (1992). In that order, the Commission noted that

the low-power television service was established for the specific purpose of supplementing conventional broadcast station coverage and we have always considered low-power stations secondary. The low-power service thus has had ample notice that it would have to yield to any full-service stations, without exception for the specific mode in which the full-service station transmits. Id.

6. In the Sixth Report and Order the Commission expressed concern about the impact of DTV implementation on secondary translator and low power services. However, it decided to maintain their secondary status. Sixth Report and Order, para 142.

7. Apart from TBN's status as a translator licensee, it should be stressed that TBN's proposal would exacerbate the already distinct disadvantage which UNCTV suffers under the Commission's current DTV Table. In this regard, UNCTV on June 13, 1997 filed a Petition for Reconsideration of the Commission's decision adopting the

DTV Table. UNCTV seeks assignment of an in-core channel as an alternative to assignment of Channel 59 proposed for WUNC-TV. As UNCTV observed therein, state public television networks like that of North Carolina with out-of-core assignments are especially harmed by assignment of out-of-core channels since they will be forced to build multiple stations and then face the difficulties of convincing state legislatures of the need or wisdom of devoting governmental funds to building two DTV stations to serve the same areas within less than ten years. TBN's proposal would worsen this circumstance by moving UNCTV's flagship station channel into the nether world of Channels 60-69 which the Commission has proposed to reallocate for a variety of other nonbroadcast services.¹ In short, the channel proposed by TBN for WUNC-TV is slated for extinction.

8. The Commission has consistently and repeatedly declared translator/low power operations to be secondary. TBN has not sought reconsideration of that policy determination. Its proposal to put UNCTV at a terrible disadvantage in order to preserve a secondary service ignores 15 years of consistent policy determinations. As the licensee of numerous translators which provide critical service to unserved areas of North Carolina, UNCTV is keenly aware of the value of translators and the need to protect such secondary operations where it can be accomplished without compromising primary facilities. TBN's request manifestly does not satisfy this principle.²

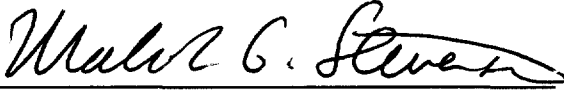
¹ See Notice of Proposed Rulemaking, ET Docket No. 97-157, FCC 97-245, adopted July 10, 1997. The Commission in particular has proposed to reallocate Channel 63 for public safety fixed and mobile use.

² It should be noted that the Commission has taken steps in the Sixth Report and Order to avoid or mitigate loss of secondary LPTV translator service. It has

WHEREFORE, for the foregoing reasons, UNCTV respectfully urges the Commission to deny TBN's Petition.

Respectfully submitted,

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provided for preferential treatment of LPTV/translator channel displacement applications. It will allow operation of displaced LPTV/translator stations on Channels 60 to 69 on a secondary basis. It has relaxed the technical rules to facilitate the selection of LPTV/translator alternate channels. TBN's efforts would be better directed to utilization of these methods to seek a new channel. In fact, it may want to consider proposing operation of its translator station on Channel 63.

CERTIFICATE OF SERVICE

I, Donna E. Trader, secretary in the law firm of Schwartz, Woods & Miller, do hereby certify that I have on this 18th day of July, 1997, sent by First Class United States mail, postage prepaid, copies of the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION** to the following:

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